

sentence on appeal in July 1996. United States v. Kubinski, No. 94-5887, 1996 WL 386612 (4th Cir. July 11, 1996). On December 10, 1997, petitioner filed a motion to vacate pursuant to 28 U.S.C. § 2255 raising eight grounds for relief. On July 1, 1999, this court granted the motion in part by vacating the conviction and sentence on Count I, and dismissed the remaining claims for failure to state a claim upon which relief can be granted. See Fed. R. Civ. P. 12(b)(6). A certificate of appealability was denied on June 28, 2001.

Petitioner has attempted to have this court review his sentence via several procedural avenues over the years. A review of petitioner's latest motion reveals no legal basis for a change in his sentence or a re-opening of his judgment. Rule 35(a) of the Federal Rules of Criminal Procedure provides "[w]ithin 14 days after sentencing, the court may correct a sentence that resulted from arithmetical, technical, or other clear error." Fed R. Crim. P. 35(a). This rule has no application to petitioner's case.

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Finding no authority to reduce his sentence or re-open his judgment, the court DENIES petitioner's motion [DE #52].

This 3rd day of April 2013.



Malcolm J. Howard
Senior United States District Judge

At Greenville, NC
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